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July 26, 2018

VIA ECFS

Marlene H. Dortch
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
CG Docket Nos. 18-152 & 02-278

Dear Ms. Dortch:

On July 24, 2018, on behalf of Broadnet Teleservices LLC (“Broadnet”), Steve Patterson of Broadnet, and Patrick Halley and the undersigned of Wilkinson Barker Knauer, LLP met separately with Zenji Nakazawa of Chairman Pai’s office; Commissioner Michael O’Rielly and Brooke Ericson of Commissioner O’Rielly’s office; Jamie Susskind of Commissioner Carr’s office; and Patrick Webre, Mark Stone, Karen Schroeder, Kurt Schroeder, and Kristie Thornton of the Consumer Governmental Affairs Bureau.

During the meetings, we reiterated points made in Broadnet’s comments and reply comments in response to the Commission’s public notice on several issues related to the interpretation and implementation of the Telephone Consumer Protection Act (“TCPA”).¹ Specifically, we explained that in the *Broadnet Ruling*,² the Commission appropriately concluded that the federal government and those that work on its behalf are not “persons” under the TCPA, and that the Commission should now extend the relief afforded under that ruling to state and local governments. We explained further that absent in the record in response to the *Public Notice* is any dispute that the Commission appropriately determined that the federal government is not a “person” for purposes of the TCPA’s restrictions. Also absent in the record

¹ Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit’s ACA International Decision, CG Docket Nos. 18-152 & 02-278 (rel. May 14, 2018) (“*Public Notice*”); Comments of Broadnet Teleservices, LLC, CG Docket Nos. 18-152 & 02-278 (filed June 13, 2018); Reply Comments of Broadnet Teleservices, LLC, CG Docket Nos. 18-152 & 02-278 (filed June 28, 2018).

² See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, CG Docket No. 02-278, FCC 16-72 (rel. July 5, 2016) (“*Broadnet Ruling*”).

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is any disagreement that, consistent with the reasoning in the *Broadnet Ruling* and relevant case law, state and local governments also are not “persons” for purposes of the TCPA.

Instead, as we explained, the concerns about the *Broadnet Ruling* in the record related exclusively to its application to contractors, despite the fact that the record contains no evidence of abuse directly tied to the *Broadnet Ruling* in the two years since it was adopted. In this regard, we noted that Broadnet continues to believe that the Commission reasonably determined the need to extend relief to those acting on behalf of government entities to effectuate congressional intent. We also noted that the *Broadnet Ruling* itself limits contractors’ ability to make calls on behalf of the government in significant ways, that Congressional rules regulate members of Congress’ use of telephone town hall calls at the federal level, and that state and local governments can likewise regulate their own practices, as well as those that act on their behalf.

Finally, we provided an overview of the significant civic engagement benefits for citizens and governments at all levels made possible by telephone town halls and described the mechanics of how telephone town halls are conducted, including Broadnet’s role as a platform provider that enables such calls. We noted that Broadnet at all times acts at the clear direction, and under validly conferred authority, of its federal, state and local government clients. Moreover, Broadnet’s government customers, and not Broadnet, make all decisions regarding whether to make a call, the timing of the call, the call recipients, and the content of the call. We explained further that Broadnet’s government customer takes the steps physically necessary to initiate a telephone town call. Broadnet’s limited involvement in any given telephone town hall call is intended to manage the technical aspects of the service and to ensure that its customers *do not* use the platform unlawfully. In other words, Broadnet’s limited involvement *is precisely to support the goals and purposes of the TCPA*.³ Thus, while Broadnet enables telephone calls, it is not the maker of such calls.⁴

³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, FCC 15-72 ¶ 30 (looking to whether a person or entity “was so involved in placing the call as to be deemed to have initiated it, *considering the goals and purposes of the TCPA*”) (emphasis added).

⁴ Cf. *id.* ¶ 40 (“[A] person who dials the number of the called party or the number of a collect calling service provider in order to reach the called party, rather than the collect calling service provider who simply connects the call, ‘makes’ the call for purposes of the TCPA.”); see also *id.* (“It is the user of such services that ‘takes the steps necessary to physically place a telephone call’ by providing the called party’s number to 3G Collect or GTL when he or she wishes to communicate with a person and by controlling the content of the call if the called party accepts the call.”).

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Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s Joshua M. Bercu/
Joshua M. Bercu